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International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the fifth periodic report of Uruguay

Addendum

Information received from Uruguay on follow-up to the concluding observations*

[Date received: 1 December 2014]

Observation No. 7

While taking note of the explanations provided by the delegation concerning the process involved in establishing the National Human Rights Institution and Ombudsman's Office, the Committee remains concerned by the fact that this agency is attached to the Administrative Commission of the legislative branch. The Committee is also concerned by the fact that the National Human Rights Institution does not have sufficient resources of its own to fully execute its mandate, under which it is also required to perform additional functions as the national mechanism for the prevention of torture (art. 2).

The State party should ensure that the National Human Rights Institution and Ombudsman's Office has the financial, human and material resources that it needs to do its job effectively on a fully independent basis in accordance with the Paris Principles. The State party should also take the necessary steps to support the work performed by the Institution in fulfilment of its role as the national mechanism for the prevention of torture and to ensure full compliance with the Institution's recommendations. The State party should encourage the Institution to apply to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) for accreditation.

1. The National Human Rights Institution and Ombudsman's Office is an independent State body that works as part of the legislative branch of government and is tasked with the defence, promotion and protection of the gamut of human rights guaranteed by the Constitution and international law.

* The present document is being issued without formal editing.

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2. It was established following the guidelines of the Paris Principles adopted by the United Nations General Assembly in resolution 48/134 of 1993, and by virtue of undertakings made under the Vienna Declaration and Programme of Action that resulted from the 1993 World Conference on Human Rights.

3. It is an additional mechanism to others already in place and its role is to provide people with greater safeguards for the enjoyment of their rights and to ensure that laws, administrative practices and public policy conform with international human rights standards. The State has no control over, inter alia, its operations, research, publication of reports or budget implementation.

4. The annual operating budget requested by the National Human Rights Institution and Ombudsman's Office at the time of its establishment was adopted without any changes. Subsequently, in 2012 and 2013, the legislative branch of government approved the necessary budget changes, granting additional resources for the Institution's activities and to cover the cost of the positions created under article 81 of Act No. 18.446 and included in the Resolution of July 2013, in accordance with proposals from the Institution itself.

5. As 2014 is an election year, the budget for hiring cannot be increased and positions cannot be created (Constitution, art. 229). Like any State-funded body, the National Human Rights Institution and Ombudsman's Office may request an increase in its annual budget in 2015, once a new law on the national budget for 2015–2020 has been adopted.

6. While there may be ways in which the law establishing the National Human Rights Institution and Ombudsman's Office could be improved, it has fulfilled its legal mandate with the 10 officials who have been seconded from other government agencies and consulting firms hired using its own or international cooperation funds.

7. Moreover, the National Human Rights Institution and Ombudsman's Office has made significant progress in the implementation of the national mechanism for the prevention of torture, in accordance with article 83 of Act No. 18.446. On 6 December 2013, the Institution and the Ministry of Foreign Affairs signed the protocol for the implementation of the national mechanism for the prevention of torture, with a view to defining the spheres of action of each institution so that the existing legislation would not undermine the independence that the mechanism should enjoy, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. In 2013, the Board of Directors of the National Human Rights Institution and Ombudsman's Office appointed Dr. Mirtha Guianze director of the national mechanism for the prevention of torture and also appointed one of the members of the team of experts in charge of organizing and coordinating the mechanism's work. The budget amendment that was approved in October 2013 established funding for the mechanism, as well as positions for at least two more experts.

9. The Board of Directors believed that the implementation of the mechanism should be matched to existing human and material resources. Therefore, and on the basis of the complaints that had been received and existing international reports, it decided that the first task would be to address the issue of adolescents entering the juvenile justice system. While a monitoring system with periodic visits to adult facilities had been in place since 2005 as a result of the establishment of the office of Parliamentary Commissioner for the Prison System, there was no equivalent in the juvenile justice system.

10. As at 31 December 2013, the national mechanism for the prevention of torture had conducted a total of 12 visits to various juvenile detention facilities as the first stage of the previously established programme of periodic visits. As a result of those visits, 10 reports were prepared and duly submitted to the authorities of the Uruguayan Institute for Children

and Adolescents and the Adolescent Criminal Responsibility System at meetings held to discuss their contents.

11. As the national mechanism's purpose is to eradicate existing rights violations in the system, its activities have been directed from the outset to establishing a smooth dialogue with the authorities of the Uruguayan Institute for Children and Adolescents and, more specifically, with those of the Adolescent Criminal Responsibility System.

12. Finally, on 5 November 2013, the National Human Rights Institution and Ombudsman's Office sent a formal letter to the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, requesting initiation of the accreditation. On 20 May 2014, the Subcommittee replied that in the light of the volume of applications, the request for accreditation of the National Human Rights Institution and Ombudsman's Office would be considered at the March 2015 session.

Observation No. 8

While it is grateful for the information provided by the delegation concerning the progress of draft amendments to the Code of Criminal Procedure, the Committee regrets the fact that the State party has yet to follow up on its preceding concluding observations (A/53/40, para. 242) regarding pretrial detention and that release on bail and other non-custodial alternative sentences are in many cases not possible in law or in practice (art. 9).

The Committee urges the State party to complete the process of amending the Code of Criminal Procedure and, in so doing, to take into account the Committee's preceding concluding observations, in which it called for a review of detention procedures and other restrictions on the liberty of accused persons or defendants in the light of article 9, while also, in particular, bearing in mind the principle of the presumption of innocence.

13. The State acknowledges the delay in the process of legislative approval. The parliamentary discussion of these statutory provisions has not been suspended. Their adoption requires comprehensive political agreements, as well as other types of measures, such as the appointment of new judges, prosecutors and public defenders (the Supreme Court says that 62 of each of these positions should be filled) and significant structural reforms to the criminal courts and offices of the Public Prosecution Service; all of this has budgetary implications that must be considered in conjunction with the draft amendments.

14. At the time of submission of the present report, the draft amendments to the Criminal Code are still being negotiated in the legislature. The Code of Criminal Procedure has been unanimously approved by the Senate and remains to be approved by the House of Representatives. As 2014 is an election year, the General Assembly of the legislature stopped meeting on 15 September 2014 pursuant to article 104 of the Constitution, without having adopted the draft texts. However, a final special session is scheduled to be held in December, at which time the Code of Criminal Procedure may finally be adopted.

Observation No. 19

The Committee is concerned about the content and effects of Supreme Court Decision No. 20 of 22 February 2013, in which the Court found that articles 2 and 3 of Act No. 18.831, which restores the State's punitive powers, were unconstitutional as applied to a case concerning serious human rights violations committed during the dictatorship. The Committee considers the Court's decision to be unfortunate and believes that its failure to recognize the inapplicability of a statute of limitations to crimes against humanity and other serious human rights violations, such as enforced

disappearances, torture and extrajudicial killings, runs counter to international human rights law. The Committee takes note of the delegation's explanations, according to which that decision is, in theory, limited in scope to the specific case in question and will not undermine the intent of Act No. 18.831 (arts. 2, 6, 7, 9 and 14).

The Committee reiterates its earlier recommendation (A/53/40, para. 240) in which it encouraged the State party to find a solution that is in full compliance with its obligations under the Covenant. In this regard, the Committee draws attention to its general comments No. 20 (1992), on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, in which it states that amnesties are in general incompatible with States' obligation to investigate acts of torture (para. 15), and No. 31 (2004), on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that States parties may not relieve the perpetrators of acts of torture, arbitrary or extra-judicial killings or enforced disappearance of their personal legal responsibility (para. 18). The Committee invites the State party to bring the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) to the attention of the Justices of the Supreme Court.

15. The Supreme Court is the highest body of the independent judiciary of the Eastern Republic of Uruguay. Under the Constitution, it is responsible for, inter alia, ruling on applications for constitutional review. Applications for constitutional review are essentially legal remedies that allow parties to proceedings to have the Supreme Court review the constitutionality of particular laws or rulings. However, the Uruguayan legal system is not governed by case law, for which reason interpretations may be radically different in the light of the circumstances of each case and the membership and understanding of the five members of the Supreme Court at any given time.

16. Moreover, findings of unconstitutionality must be made on a case-by-case basis and cannot have blanket application. As the members of the Committee noted, in February 2012, the Supreme Court found that two articles of Act No. 18.831 of 27 October 2011 were unconstitutional. These two articles established that there would be no limitation period or statute of expiry for crimes committed during the period of military rule, and that the latter constituted crimes against humanity under the international treaties to which Uruguay is a party. In issuing this ruling and other subsequent rulings that found articles 2 and 3 of the above-mentioned Act to be unconstitutional, the Supreme Court argued against the non-applicability of statutory limitation to such crimes.

17. However, trials concerning serious human rights violations, many of which involved enforced disappearance, are still being held in national criminal courts in spite of this ruling. It should be noted that there are differing views on whether the statute of limitations applies to this crime, and some judges who have used other legal grounds to continue proceedings already under way have not been arrested in their respective courts.

18. Finally, the Government, for ethical and legal reasons, intends to continue moving forward with a view to achieving truth and justice and affirms its full compliance with its binding international obligations.